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December 6, 2005

President De La Fuente and Members
Oakland City Council
Oakland, CA

RE: Ordinance Creating Chapter 2.36 of the Oakland Municipal Code to Prohibit Franchise Grantees from Discriminating Against Employees for Participating in Employee Organizations; Require Franchise Grantees to Notify Contractors and Subcontractors of their Labor Obligations; Prohibit Discrimination Against Employees for Speaking Before or Filing a Complaint with Any Government Agency or Court; Ensure that Company Policies are not Construed to Limit Organizing Activities by Employees, and; Authorize the Establishment of a "Franchise Grantee Workers Rights Board"

President De La Fuente and Members of the City Council,

At the November 8, 2005 Finance and Management Committee, staff was asked to prepare an ordinance for City Council consideration that would amend the Oakland Municipal Code to apply particular labor protections to any organization granted a franchise by the City of Oakland.

The City Attorney's Office has prepared such an ordinance for City Council approval. The ordinance requires that a franchisee recognize that employees have the right to organize and cannot be retaliated against for speaking before or complaining to a government agency or court. The ordinance also establishes, within six months of passage, a charter created Worker's Rights Board. According to the City Attorney, the proposal would apply to all existing and future franchisees in the City and would not create any duty or power in conflict with federal or state law.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Deborah A. Edgerly".

Deborah A. Edgerly
City Administrator

OFFICE OF THE CITY CLERK
OAKLAND

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APPROVED AS TO FORM AND LEGALITY



City Attorney

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE NO. _____ C.M.S.

ORDINANCE CREATING CHAPTER 2.36 OF THE OAKLAND MUNICIPAL CODE TO: PROHIBIT FRANCHISE GRANTEEES FROM DISCRIMINATING AGAINST EMPLOYEES FOR PARTICIPATING IN EMPLOYEE ORGANIZATIONS; REQUIRE FRANCHISE GRANTEEES TO NOTIFY CONTRACTORS AND SUBCONTRACTORS OF THEIR LABOR OBLIGATIONS; PROHIBIT DISCRIMINATION AGAINST EMPLOYEES FOR SPEAKING BEFORE OR FILING A COMPLAINT WITH ANY GOVERNMENT AGENCY OR COURT; ENSURE THAT COMPANY POLICIES ARE NOT CONSTRUED TO LIMIT ORGANIZING ACTIVITIES BY EMPLOYEES, AND; AUTHORIZE THE ESTABLISHMENT OF A "FRANCHISE GRANTEE WORKERS RIGHTS BOARD".

WHEREAS, the right to occupy the Public rights-of-way cannot be granted to all Persons, and those who are granted that right obtain significant benefits; and

WHEREAS, the grant of a franchise for the right to use the Public rights-of-way must be exercised in a manner consistent with the public interest; and

WHEREAS, labor/management conflict can adversely affect the efficient use of streets and sidewalks, the City's emergency communications systems, public information and transportation services and receipt of franchise revenues, including but not limited to franchise fees; and

WHEREAS, a major potential source of labor/ management conflict that threatens the economic interests of the City is the possibility of economic action taken by labor unions against Franchise Grantees that can result in construction delays, work stoppages, service interruptions, picketing, strikes, and consumer boycotts that can generate negative publicity and reduced revenues; and

WHEREAS, the creation of a Franchise Grantee Workers Rights Board responsible for monitoring all Franchise Grantee's compliance with federal/state or city labor laws or standards would provide a useful non-confrontational forum for resolving labor issues; and

WHEREAS, the City finds that the establishment of minimal labor standards for Franchise Grantees does not substantially impair the rights of a Franchise Grantee under applicable state and federal law; and

WHEREAS, it is both reasonable and necessary to establish minimal labor standards for Franchise Grantees in order to protect the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAKLAND:

SECTION 1. Chapter 2.36 of Title 2 of the Oakland Municipal Code is hereby amended to read as follows:

2.36.010 Title and Purpose.

This chapter shall be known as the "Oakland Franchise Grantee Workers Rights Ordinance." The purpose of this chapter is to support the right of workers and contractors of franchise grantees in the City of Oakland to organize, to speak before a government agency or file complaints with a government agency, board, commission or court without retaliation, and to provide a non-confrontational forum for discussing and resolving labor issues.

2.36.020 Franchise Grantee General Obligations.

A Franchise Grantee (hereinafter "Grantee") established pursuant to Article X, Section 1000 of the Oakland City Charter shall at all times be subject to and shall comply with the provisions of this Ordinance, its Franchise, and all other Applicable Law.

2.36.030 Employee Right to Organize.

A Grantee shall comply with 29 USC Section 151 et seq. which prohibits discrimination based on an employee's decision to form, join and/or participate in the

activities of employee organizations of the employee's own choosing for the purpose of representation. A Grantee shall notify all contractors and subcontractors performing any work, labor or services on Grantee's behalf in the City of Oakland that they must comply with this section. A Grantee is required to deal with representatives duly elected by a majority of its employees for purposes of collective bargaining in accordance with applicable laws and shall comply with all federal, state and local laws and regulations governing equal employment opportunities, labor relations and hiring practices, as the same may be amended from time to time. Nothing in this section shall be interpreted or applied so as to create any duty or power in conflict with any federal or state law.

2.36.040 Speech Rights of Employees.

A Grantee may not discriminate or take any adverse action against any of its employees or the employees of any of its contractors or subcontractors performing work, labor or services for Grantee in retaliation for speaking before or filing a complaint with any government agency, board, commission or court of law in the City of Oakland regarding the employee's good faith belief that the Grantee or its contractor or subcontractor has violated federal, state or local law, or the terms of the Grantee's franchise. Accordingly any internal policies, employee handbooks, directives, or codes of conduct promulgated by a Grantee shall not be construed to limit employees from informing, testifying before or participating in any government agency, board, commission or court sponsored proceeding in the City of Oakland regarding the employee's good faith belief that the Grantee or its contractor or subcontractor has violated federal, state or local law, or Grantee's franchise. Nothing in this section shall be interpreted or applied so as to create any duty or power in conflict with any federal or state law.

2.36.050 Establishment of Franchise Grantee Workers Rights Board.

The City Council of the City of Oakland hereby mandates the establishment of a Franchise Grantee Workers Rights Board that will monitor Franchise Grantees' adherence to or violations of federal, state and city labor laws/standards.

A. Appointment, Composition of Board. Within six months from the effective date of this Ordinance, the City shall establish by Ordinance the powers, duties and terms of appointment and composition of the Franchise Grantee Workers Rights Board pursuant to the procedures and requirements of Oakland City Charter section 601. No person shall be eligible to serve as a member of the Franchise Grantee Workers Rights Board who is an employee, contractor or consultant for any Grantee of a City Franchise.

B. Duties of Board. At the minimum, the duties of the Franchise Grantee Workers Rights Board shall include but not be limited to: Monitoring Grantees to ascertain compliance with the terms of this Ordinance, their franchises and state and federal law; holding regular agendized meetings to discuss compliance issues, and; providing advice and recommendations to the City Council regarding Grantee labor issues on a regular basis but in any event not less than once annually.

2.36.060 Scope.

The provisions of this chapter shall apply to a franchise granted by the City pursuant to City Charter Article X, section 1000, that is negotiated, entered into, amended, renewed, extended, or otherwise renegotiated on or after the effective date of the ordinance codified

in this chapter, and shall apply to any franchise entered into by the City pursuant to City Charter Article X, section 1000 and granted prior to the effective date of the ordinance codified in this chapter to the extent not prohibited by applicable law.

2.36.070 Enforcement.

The City shall investigate complaints that this Ordinance has been violated and may take any action necessary to enforce compliance, including but not limited to instituting a civil action for an injunction and/or specific performance.

2.36.080 Severability.

If any part or provision of this chapter, or the application of this chapter, to any person or circumstance, is held invalid, the remainder of this chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this chapter are severable.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the
Council of the City of Oakland, California